ment to the *Official Journal* in the form to be determined by decree. Mention of this insertion with reference to the number of the journal in which it has been published shall be made in all notices, prospectuses, newspaper articles, subscription, or purchase forms."

"Any foreign company which proceeds in France to make a public issue either of shares or of bonds, shall be bound further to publish in full in the same supplement of the *Official Journal* and before any issue, the deed of constitution of the company."

By another bill now pending in the chamber of deputies a license tax of one-fourth of one per cent is imposed upon the entire capital stock of all foreign companies doing business in France.

Courts.—Interference with Verdicts and Judgments because of Technical Defect. There is pending before the legislature of Wisconsin a bill (no. 281 S) which provides: "No judgments shall be set aside or new trial granted in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

The champions of the measure desire to reduce the number of reversals of judgments by the supreme court because of errors in matters of pleading and practice which do not involve the merits of the case, and to expedite the final determination of the cause based upon the merits of the controversy.

The practice of the apellate courts at present is to grant a new trial if irrelevant or incompetent evidence is received which has a tendency to prejudice the jury, or, as sometimes stated, a new trial will be granted unless it can be seen that such evidence could have no influence upon the jury.

If the court is of the opinion that the error in receiving or excluding evidence was not prejudicial, a new trial will not be granted. In general the same rule applies as to erroneous instructions. It is now proposed to change the rule and grant a new trial only when it affirmatively appears that the error complained of was prejudicial; and the question which is at once presented to a person at all familiar with the rules of evidence and jury trials is, if the proposed bill is enacted into law, will it in reality work for the furtherance of justice?

While the great writers on the common law never wearied in passing

encomiums on the right of trial by jury, yet they were very careful to guard against allowing improper evidence to go before the jury. Indeed, the great bulk of the law of evidence consists of rules of exclusion; in declaring what is *not* evidence. Heresay evidence is properly excluded from the jury for the reason, as stated by Lord Mansfield, that no man can tell what effect it might have upon their minds. Likewise with irrelevant evidence. If a prosecution for murder permits evidence to go before the jury that, three years before, the accused stole rye in another State, who can say what effect it had upon the minds of the jury? Can the appellate court from an inspection of the records say that it affirmatively appears that there was a miscarriage of justice?

In the thousand years and more of the development of the right of trial by jury it has been found necessary to throw about a person accused of crime certain safeguards in order that justice may be done; and since civilization has realized that the ends and purposes of a criminal trial are as much to protect the innocent accused as to punish the guilty, appellate courts have, times without number, been called upon to apply those safeguards, those exclusionary rules of evidence, not because they are not well understood, but because over-zealous prosecutors have again and again trespassed upon them.

Under the law at present in Wisconsin and in most, if not in all, the States the court is required in every stage of an action to disregard any error or defect in the pleadings or proceedings which do not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect. (Wis. Rev. St., §2829.) Likewise in criminal proceedings, defects or imperfections in matters of form at any stage of the proceedings which do not tend to prejudice the defendant, are to be disregarded. (Wis. Rev. St. §4659.)

Is justice delayed and defeated in criminal cases by reason of reversals by appellate courts?

Out of about eleven thousand persons found guilty of charges of felony in the New York county courts, 1898–1902 inclusive, not quite nine in a thousand have had the judgment against them passed upon by an appellate court; in only two and a half cases in a thousand has the judgment been reversed. (Nathan A. Smyth in 17 Harv. Law Rev., 317.) In Wisconsin there have been ninety-eight criminal appeals in the last eight years; of these thirty have been reversed.

The records in the office of the district attorney of New York county show that in cases where the prisoner was kept in the city prison and not released on bail, in a total of about three thousand cases the average lapse of time from the date of the original arrest to final judgment, including the preliminary hearing before the magistrate, the presentation of the evidence to the grand jury, and the final disposition either by trial, plea of guilty, or discharge, was only eight days. (Nathan A. Smyth in 17 Harv. Law Rev., 317.) On the other hand, it appears that the number of new trials in this country is 46 per cent as against 3 per cent in England.

Concerning technicalities in criminal proceedings, the Wisconsin supreme court in a recent case has this to say: "Much progress has been made in ridding the criminal law of the reproach that it allows minute defects and trivial technicalities, by which none is misled, to subvert the cause of substantial justice. The ancient rules in pleading and procedure have been greatly relaxed; defects or imperfections in matters of form at any stage of the proceedings which do not tend to prejudice the defendant are to be disregarded (Wis. Rev. St. 1898, §§4658, 4659), and our statutes have gone so far as to provide that "no indictment, information, process, return or other proceedings in a criminal case in the courts or course of justice shall be abated, quashed or reversed for any error or mistake where the person and the case may rightfully be understood by the court, and the court may on motion order an amendment curing such defect." (Wis. Rev. St. 1898, §4706, State ex rel McKay v. Curtis (Wis.) 110 N. W. 189.)

The legislature can regulate the procedure in the appellate courts, the manner and the time within which an appeal can be taken, but it is equally certain that the legislature cannot assume judicial power or arrogate to the law making department power which the people through constitution have vested in the judiciary. The judiciary as a coördinate branch of the government, when acting within its proper sphere, is beyond legislative control. But irrespective of the question of constitutionality of the proposed law before the Wisconsin legislature, it is safe to say that there will be a difference of opinion as to whether justice will be served by a law which permits an appellate court to interfere with a judgment only when it affirmatively appears that injustice has been done. Irrelevant and heresay evidence which has no logical bearing upon the issues in the case and which all will agree should never be permitted to reach the ears of the jury, is often

the dominant factor in the determination of a verdict. The appellate court cannot say what weight such evidence had with the jury. In some cases it may have little weight, in others it may work flagrant injustice; the record upon appeal will not indicate which. For those reasons many will be of the opinion that in both criminal and civil actions it is more important that the trial court, which for the great majority of litigants is a court of last resort, should be guided by the rules of law and evidence applicable to the case, and that the trial judge and attorneys know with certainty that if those rules are violated the appellate court will interfere with the verdict.

WILLIAM RYAN.

Deposit of Public Funds. The question of public depositories has occupied the attention of a number of State legislatures this winter. Bills have been introduced in Washington, Oregon, South Dakota, Illinois and Indiana, besides more or less important amendments proposed in several States which already have this system.

Indiana has taken an advanced position in the law passed there. (1907, c. 222.) It provides for the selection of depositories for public funds of all kinds, applies to the whole State and to all subordinate political units, thus including township, town, city, school town and school city, county and State. Boards of finance are created for these different units. The State board is made up of the governor, treasurer and auditor, and has advisory supervision of all funds belonging to the State and coming into the hands of any State board, officer or institution. The county board of finance consists of the board of county commissioners, with the addition of the mayor and comptroller in cases where the county treasurer is ex officio treasurer of the county seat city, and of the chief executive officer of such school city. In cities the mayor and common council constitute the finance board, in towns the board of trustees, in school cities or towns the board of school commissioners or school trustees, and in townships the advisory board.

Banks eligible as public depositories must be subject to examination either as national or State banks. Security must be offered in the form of a personal surety bond signed by freeholders of the State (five for local depositories and seven for State) in a sum 25 per cent. greater than the amount of funds which may be deposited, or a surety company bond of an amount not less than the deposits. Or a part of